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May 15, 2024

VIA ECF

Hon. Vernon S. Broderick, U.S.D.J.
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

**Re: ROWE PLASTIC SURGERY OF NEW JERSEY, L.L.C. & EAST COAST
PLASTIC SURGERY, P.C., against AETNA LIFE INSURANCE COMPANY; 1:23-cv-
08532-VSB; JOINT STATUS REPORT**

Your Honor:

Lewin & Baglio, LLP, represents the Plaintiff(s) Rowe Plastic Surgery of New Jersey, L.L.C., ("RPSNJ") & East Coast Plastic Surgery, P.C., ("ECPS") in the above matter. We write together with Counsel for Defendant Aetna Life Insurance Company ("Aetna") pursuant to Your Honor's order of May 1, 2024, directing the parties to submit a joint status letter.

This matter is one of a number of matters pending between the parties in the Southern District of New York. The following table shows the case number and the full caption. Each of those matters has been stayed pending a decision by the Second Circuit in two cases: *Park Avenue Podiatric Care, P.L.L.C. v. Cigna Health and Life Insurance Company*, 23-1134 ("*Park Ave. Appeal*"); and *Rowe Plastic Surgery of New Jersey, L.L.C. v. Aetna Life Insurance Company* 23-8083 ("*RPSNJ Appeal*"). Both appeals are on the Second Circuits expedited schedule and both appeals have been fully brief. The Second Circuit has heard argument in The *Park Ave. Appeal*; The *RPSNJ Appeal* is pending argument. The two appeals are relevant because of the issues appealed. The issue in the *Park Ave. Appeal* is whether claims by an out of network provider seeking additional payment after a payment has already been made is Expressly Preempted by ERISA §514. The issue on the *RPSNJ* appeal is whether a reasonable person would understand an insurer's oral representation of a specific rate of reimbursement made to RPSNJ, which was made during a phone that also sought to verify insurance coverage, as an offer or promise to pay RPSNJ a particular amount.

Both parties believe a stay in this case is appropriate. A stay of the case will be in accordance with actions taken by sister courts in this District. In fact, the other 13 cases between the parties that are pending before this Court have been stayed

APPLICATION GRANTED

SO ORDERED

VERNON S. BRODERICK

U.S.D.J. 5/20/2024

This action is hereby STAYED pending the Second Circuit's decision on the appeals in *Park Avenue Podiatric Care, P.L.L.C. v. Cigna Health and Life Insurance Company*, 23-1134; and *Rowe Plastic Surgery of New Jersey, L.L.C. v. Aetna Life Insurance Company*, 23-8083.

pending the *Park Ave.* and the *RPSNJ* Appeals. The similar factual and legal issues raised by the pleadings in this case to the issues raised in the appealed cases make a stay appropriate. The Second Circuit's resolution of the issues raised in the two appeals will likely inform the Parties as to the soundness of their claims or defenses, as the case may be. The Second Circuit's resolution of the issues will also inform this Court as to the applicable legal standard and rationale for resolving the issues raised.

Accordingly, both parties request this Court join with its sister court's by staying this case pending the decision by the Second Circuit in *Park Avenue Podiatric Care, P.L.L.C. v. Cigna Health and Life Insurance Company*, 23-1134 and *Rowe Plastic Surgery of New Jersey, L.L.C. v. Aetna Life Insurance Company* 23-8083.

The Parties' Counsel is available at the Court's convenience.



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